

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3086 of 1998

KANTILAL JAIRAMDAS THAKKAR

Versus

COLLECTOR BANASKANTHA

Appearance:

MR DK ACHARYA for Petitioner

MR MUKESH A PATEL, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order: 13/07/98

C.A.V. ORDER

1. Only contention raised by the learned counsel for the petitioner in this special civil application is that from 31st August, 1997, no extension is given to the provisions of section 6 (c) for appeals and now the jurisdiction to hear and decide the appeals against the orders passed under section 6(A) of the Essential Commodities Act, 1955 does not rest with the State Government and as such the order of the State Government dated 25th November, 1977 passed on the appeal of the petitioner is without jurisdiction and inoperative.

2. On the other hand, the counsel for the State contended that even after 31st August, 1997 the State Government has jurisdiction to hear the appeals which were filed before it earlier to the said date. In this respect, reliance has been placed by the learned counsel for the State on the letter of the Government of India, Ministry of Food & Consumer Affairs (Department of Consumer Affairs), Shastri Bhavan, New Delhi dated 17th December, 1997.

3. To appreciate the rival contentions raised by the learned counsel for the parties and to decide this matter, the facts of the case as stated by the petitioner in the special civil application are to be taken briefly. The petitioner is running an Oil industry in the name and style of "Krishna Oil Industries" at Banaskantha

District. On 1-7-1994, the Civil Supplies Officer examined the petitioner's oil industry and on examination of the book of accounts and the stock on hand, certain irregularities were found and "Raida" and "Raida" Oil worth Rs.58600/- of the petitioner was seized. On application of the petitioner the said goods were ordered to be released by the Collector on security of the bank guarantee of the amount of Rs.58600/-. The Collector issued show cause notice dated 25th July, 1994 to the petitioner as to show cause why the goods seized from the petitioner's industry may not be confiscated to the State. The petitioner replied to the show cause notice on 1-8-1994. Under the order dated 7th November, 1994, the Collector, Banaskantha ordered for confiscation of "Raida weighing Quintal 47 - 60 kgs. worth Rs.47600/and Raida Oil Q. 4 -20 kgs. worth Rs.11200/- total goods worth Rs.58800/- (from the facts stated in the special civil application there appears to be some mistake in the figures of the cost of Raida and Raida oil given by the petitioner but that is not material for the purpose of deciding this special civil application). Against the order of the Collector, dated 7-11-1994, the petitioner preferred an appeal before the State Government which was dismissed on 31-5-1996. That order has been challenged by the petitioner before this Court by filing special civil application No.4444/96. That special civil application came to be decided on 23-7-1997 and this Court has been pleased to remand the matter back directing that the confiscation of whole of the stock of Rs.58800/- was harsh and to reconsider the same. On remand, the Dy. Secretary, Civil Supplies Department, under its order dated 25th November, 1997 reduced the confiscation amount to Rs.40000/-. Hence, this special civil application before this Court.

4. It is not in dispute that the provision of section 6-C which came into existence by ordinance No.9 of 1966 on 12-7-1966 was extended temporarily from time to time but under the notification dated 31st August, 1997, this provision has not been given any extension. In the absence of any extension, the original provision as contained in the Act will be reinstated.

5. Learned counsel for the petitioner on being asked by the Court has very fairly admitted that before the appellate authority no point of jurisdiction has been raised. Learned counsel for the petitioner admitted that the day on which the appeal has been filed and even on the day on which the appeal was earlier decided and again the matter has been remanded back by this Court, the provision of section 6-C was in force. Learned counsel

for the petitioner also does not dispute the letter of the Government dated 17th December, 1997 under which the appeals which were pending on the date of 31st August, 1997 were ordered to be heard and decided by the State Government. In the appeal, on remand the arguments were heard on 11-11-1997 and this point was not raised by the petitioner before the appellate authority. Only when the decision has been given by the appellate authority adverse to the petitioner then this point is raised first time before this Court. The very fact that despite of coming into force of notification dated 31st August, 1997 this plea has not been raised goes to show that the petitioner was not in any manner interested to raise this point. There may be another inference which can be drawn that the petitioner in fact wanted to take a chance before the appellate authority, the State Government herein, and when the order has been passed against the petitioner then this point has been raised.

6. Learned counsel for the petitioner in support of his contention made reference to two decisions, one of the Allahabad High Court and other of the Privy Council in the case of Mrs. Avril Ellen Smith vs. Reginald Frank Smith reported in AIR 1954 ALLAHABAD 624 and in the case of Gooderham and Worts, Ltd. vs. Canadian Broadcasting Corporation reported in AIR (36) 1949 Privy Council 90, but each case has to be decided on the basis of its own facts. Earlier the appeal was decided on 7-11-1994. This Court cannot be oblivious of the fact that, that decision of 7-11-1994 has been challenged by the petitioner before this Court and this Court has remanded the matter to the appellate authority with a direction to consider - whether in the facts of the case, whole of the amount has to be confiscated or some part thereof. So the specific direction of this Court on remand was there, and the appellate authority has to consider the remanded matter in the light of the observations of this Court. In the present case, the petitioner in fact did not find any substance in the contention raised in this Court for the first time otherwise this point should have been raised before the appellate authority.

7. There is yet another aspect of the matter. Learned counsel for the petitioner has not raised any contention before this Court except the contention of jurisdiction. So on merits, the order passed by the appellate authority has not been challenged. Learned counsel for the petitioner does not find any illegality in the order other than jurisdiction. In the absence of any challenge to the impugned order on merits, only on

this ground I fail to see what useful purpose will serve to the petitioner to send the matter to the District Court. Even if it is taken that some jurisdictional error is there in the impugned order, this Court sitting under Article 226 of the Constitution will not interfere in the matter particularly where by the impugned order of the Court no prejudice is caused to the party concerned. The petitioner is not felt aggrieved of the impugned order where it relates to confiscation of Rs.40,000/-. Substance, and not the form has to be considered. Substance is Rs.40,000/- and when against this part of the impugned order the petitioner has not made any grievance, what useful purpose will serve to send the matter before District Court. In the case in hand, as observed earlier, so far as the merits of the matter is concerned, no point has been raised by the learned counsel for the petitioner and only jurisdiction point has been raised. This Court in earlier special civil application has not found any illegality in the order of the appellate authority on merits and the matter has been remanded only to consider the question - whether whole of the amount has to be confiscated or part thereof. This Court in its order dated 23rd July, 1997 observed that the order dated 7-11-1994 as confirmed by the appellate authority under its order dated 3-6-1996 is just and proper order and no interference is called for especially in a petition under Article 227 of the Constitution of India wherein this Court has limited jurisdiction. Only point which has been prevailed with this Court is that, whether whole of the amount should have been confiscated or not and for this the matter has been remanded. So the limited question before the appellate authority was left for consideration by this Court that whether Rs.58800/has to be confiscated as a whole or some lesser amount. Under the impugned order, the appellate authority has considered this aspect and instead of Rs.58800/- it has ordered for confiscation of Rs.40000/-. In view of this position otherwise also, the petitioner cannot make any grievance.

8. This Court has very limited jurisdiction under Article 226 of the Constitution. The petitioner, at the cost of repetition it is stated, has not felt himself aggrieved of on merits of the order of the appellate authority and felt contended by raising of this point which appears to have been raised for the sake of contention. In the absence of any challenge to the order on merits this challenge to the order on the ground of jurisdiction which will otherwise not result in failure of justice, no interference is called for in the present case. In the absence of any failure of justice even if

the order of the appellate authority suffers from any jurisdictional defect, this Court will not exercise its power under Article 226 of the Constitution. Reference in this connection may have to the two decisions of the Hon'ble Supreme Court in the case of A.M. Allison vs. B.L. Sen reported in AIR 1957 SC 227 and in the case of Balvant Rai vs. M.N. Nagrashna reported in AIR 1960 SC 407. In the facts and circumstances of the present case, I do not consider it to be appropriate to go on and decide the larger issue as sought to be contended by the learned counsel for the parties.

9. In the result, this special civil application fails and the same is dismissed. Notice discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

(S.K. Keshote,J)

zgs/-